

## Department of Education

## Pt. 2910

(b) The Director, Directorate of Procurement and Grant Management, is authorized to make the statement regarding suspension by another agency suspending official under the conditions in FAR 9.407-1(d).

### 2909.407-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in FAR 9.406-2, becomes known to a DOL employee, the head of the contracting activity affected shall be notified. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation, which documents the cause for suspension, to the Director, Directorate of Procurement and Grant Management.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of the Inspector General, as required, the Director, Directorate of Procurement and Grant Management, shall initiate suspension by taking the actions listed in FAR 9.407-3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.407-3(b)(2), the Director, Directorate of Procurement and Grant Management, shall afford the contractor the opportunity to appear at an informal hearing as required by FAR 9.407-3(b)(2)(i). The hearing shall be conducted under the conditions in 2909.407-3(c).

(d) *Suspension decisions.* The Director, Directorate of Procurement and Grant Management, shall make a final decision on suspension as prescribed in FAR 9.407-3(d). Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the provisions in FAR 9.407-3(d)(4).

### Subpart 2909.5—Organizational Conflicts of Interest

#### 2909.503 Waiver.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive any general rule or procedure in FAR 9.5 when its application in a particular situation would not

be in the Government's interest. Pursuant to FAR 9.503, this authority may not be redelegated.

(b) Requests for waivers shall be made by the head of the contracting activity to the Director, Directorate of Procurement and Grant Management. Each request shall include:

(1) An analysis of the facts involving the potential or actual conflict including benefits and detriments to the Government and prospective contractors;

(2) A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and

(3) Identification of the provision(s) in FAR subpart 9.5 to be waived.

(c) In making determinations under 2909.503(a), the Director, Directorate of Procurement and Grant Management, shall request the opinion of the Office of the Solicitor.

### 2909.507 Procedures.

(a) If a prospective contractor disagrees with the decision of a contracting officer regarding an organizational conflict of interest provision and requests higher level review in accordance with FAR 9.507(c)(4) the matter shall be referred to the Director, Directorate of Procurement and Grant Management for review and final decision.

(b) Referrals shall be made by the head of the contracting agency concerned and include the contracting officer's decision and the position of the prospective contractor.

(c) In making determinations under 2909.507(a), the Director, Directorate of Procurement and Grant Management, shall request the opinion of the Office of the Solicitor.

## PART 2910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

2910.004 Selecting specifications or descriptions for use.

2910.004-70 Brand name products or equal.

2910.007 Deviations.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8924, Mar. 5, 1985, unless otherwise noted.

**2910.004 Selecting specifications or descriptions for use.**

(a) In accordance with FAR 10.1004(b)(2), purchase descriptions shall not specify a product, or specific feature of a product, peculiar to a manufacturer unless it is determined in writing by the Office initiating the purchase request that the product, or specific product feature, is essential to the Government's requirements and other similar products will not meet these requirements. This determination shall be in writing and shall accompany the purchase requisition.

(b) A "brand name or equal" purchase description shall be used only under the conditions listed in FAR 10.004(b)(3) and in accordance with the policies and procedures in 2910.004-70.

**2910.004-70 Brand name products or equal.**

(a) *Limitations on use.* The identification of a requirement in a purchase description by use of one or more brand name products followed by the words "or equal" shall be used only under the conditions listed in FAR 10.004(b)(3). A "brand name product" means a current commercial product of a manufacturer described by its brand name, make, model number, catalog designation, or other description by which it is regularly offered for sale to the public in the commercial market place.

(b) *Invitation requirements.* (1) "Brand name or equal" purchase descriptions in invitations shall identify salient characteristics of the product (see 2910.004-70(b)(2)) and contain the following information to describe the specific item:

(i) Identification of the item by generic descriptions;

(ii) Make, model number, catalog designation (or other description), and identification of commercial catalog where it is listed; and

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(2) In accordance with the policy in FAR 10.002, whenever a "brand name or equal" purchase description is used, offerors shall be given the opportunity

to offer products equal to the brand name if those products (including modifications thereto) satisfy the minimum needs of the Government. Therefore, all salient characteristics of the "brand name or equal" product which are determined by the office initiating the purchase request to be essential to the Government's minimum needs shall be identified separately under the heading of "Salient Characteristics" and included in the purchase description contained in the solicitation so the offeror understands the information to be submitted with its bid when offering an "equal" product for evaluation. In addition, the following certification shall be included at the end of each "brand name or equal" description in a solicitation for an offeror to identify its "equal" product:

Offerors proposing to furnish an "equal" product, in accordance with the "Brand Name or Equal" provision of this solicitation, shall insert the following description for the product.

Bidding on: \_\_\_\_\_  
 Manufacturer's Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Product Name (if any): \_\_\_\_\_  
 Product make, model, or catalog description: \_\_\_\_\_

Offerors shall also be responsible for submitting all additional information on the above product necessary for the Government to determine whether the product offered meets the salient characteristics of the "brand name" as listed in the solicitation.

**2910.007 Deviations.**

(a) Heads of contracting activities are authorized to approve deviations and exceptions to specifications or standards listed in the Index of Federal Specifications and Standards when the exceptions listed under FAR 10.006 do not apply. The Director, Directorate of Procurement and Grant Management, shall be notified formally and provided a copy of each deviation or exception approved.

(b) Heads of contracting activities are responsible for accomplishing the actions required under FAR 10.007.